IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

Madan Neelgar & anr. Vs. Mst. Bashiru & ors.

S.B. CIVIL REVISION PETITION NO.26/2003 against the order dated 10.10.2002 passed by District Judge, Jaipur District in Civil Suit No.34/2002.

Date of Order :: April 25, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. N.K. Maloo for the petitioner-defendants.
Mr. N.K. Joshi for the respondent-plaintiffs.

BY THE COURT:

1. This revision petition is directed against the order dated 10.10.2002 whereby the learned trial court rejected the application filed by the defendant under Order 7 Rule 11 CPC seeking dismissal of the suit on the ground of bar of jurisdiction under the provisions of Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Section 46 of the Administration of Evacuee Property Act, 1950.

2. The case of the defendant in the application was that plot No.30/76 situated in village Chomu was an evacuee property which was purchased by auction by one Bhojumal on 30.5.1962 for which he was issued the sale certificate on 27.10.1986. The present plaintiffs who are wife and LRs of one Munir Khan only filed an appeal against such sale certificate U/s.22 of the aforesaid Act of 1954 before the Collector-cum-Settlement Commissioner

(Rehabilitation), Jaipur who rejected the said appeal vide order dated 3.7.2001 and the revision petition against the order of Collector was also rejected by the Revenue Appellate Authority cum Chief Settlement Commissioner (Rehabilitation) on 19.3.2002. The plaintiffs further filed a petition U/s.33 of 1954 Act before the Rehabilitation Commissioner, Bikaner on 1.4.2002 which is still pending.

3. It may be pointed out that all the following five enactments in connection with the evacuee property have since been repealed by the Displaced Persons Claims and Other Laws Repeal Act, 2005 by Act No.38 of 2005 vide notification 6.9.2005. The names of the enactments repealed are given in the Schedule are as under:-

The Schedule
(See Section 2)
REPEAL OF ENACTMENTS

Sl. No.	Name of the Act	Year	Act No.
1.	The Administration of Evacuee Property Act	1950	31
2.	The Displaced Persons (Claims) Act	1950	44
3.	The Evacuee Interest (Separation) Act	1951	64
4.	The Displaced Persons (Claims) Supplementary Act	1954	12
5.	The Displaced Persons (Compensation and Rehabilitation) Act	1954	44

However, by virtue of General Clauses Act, the acts done or orders passed under these enactments would be saved.

4. Mr. Maloo, learned counsel appearing for the petitioner relying on the following judgments argued that the aforesaid property namely plot No.30/76 being an

evacuee property, any objection with regard to that could be raised only before the competent authorities and forums under these enactments and in fact such objections were raised by the plaintiff before these authorities and having failed there, the present suit was filed by the plaintiff to by pass and overcome that difficulty and the learned trial court has fallen into error in rejecting the application under Order 7 Rule 11 CPC as the suit was clearly barred by specific provisions of these enactments which were special laws for special purpose.

(i) **Mukhtiyar Ahmed Vs, Union of India & ors.** [2005 (7) RDD 2635];

(ii) **Vithalbhai (P) Ltd. Vs. Union Bank of India** [(2005) 4 SCC 315];

(iii) **Sopan Sukhdeo Sable & ors. Vs. Assistant Charity Commissioner & ors.** [(2004) 3 SCC 137]; and

(iv) **Pearlite Liners (P) Ltd. Vs. Manorama Sirsi** [(2004) 3 SCC 172].

5. On the other side, Mr. N.K. Joshi, learned counsel for the plaintiff respondents submitted that once Bhojumal who purchased the said property on 30.5.1962 was put in possession and who in turn sold the said property to Madan Neelgar, the present petitioner, there was no question of again issuing the sale letter and certificate in favour of Bhojumal after such a long lapse of time on 27.10.1986 and merely because such sale certificate was challenged by Munir Khan, husband of plaintiff Smt. Bashiru, the present suit filed for declaration cannot be barred and is not hit by the bar of jurisdiction contained in the aforesaid enactments.

6. Having heard the learned counsel, this Court is of the opinion that the present revision petition deserves

to be allowed. Once the husband of the plaintiff Munir Khan had challenged these very orders passed in favour of Bhojumal, the original auction purchaser under the aforesaid special enactments before the appropriate forums under these laws and raised these very objections which are sought to be raised in the present suit that on the strength of the said sale certificate in favour of Bhojumal, the said successor in title Madan Neelgar tried to encroach upon the land of the present plaintiffs and those authorities which were only the competent authorities under these special enactments to decide these objections including that of title and possession, the present suit cannot be held to be maintainable outside the ambit and scope of aforesaid special laws. The Hon'ble the Supreme Court in case of **Custodian, Evacuee Property, Punjab & ors. Vs. Jafran Begum** [AIR 1968 SC 169] has clearly held in para 9 that U/s.7 of the Act, the Custodian has to determine whether certain property is or is not evacuee property. To determine that he is to find out whether a particular person is or is not an evacuee, if he comes to the conclusion that the property belongs to that person, he declares the property to be evacuee property. The Hon'ble Supreme Court further held that there is nothing in Section 7 which shows that the Custodian cannot decide what are called complicated questions of law or questions of title.

7. In view of the aforesaid legal position, the contention of learned counsel for the plaintiff respondents Mr. N.K. Joshi that the suit property was different from plot No.30/76 while in the present suit also he has challenged those very orders pertaining to plot No.30/76 which was purchased by Bhojumal and transferred to Madan Neelgar cannot be accepted. The suit was barred by virtue of provisions of Section 36 of 1954 Act and Section 46 of 1950 Act.

8. Therefore, the revision petition is allowed. The impugned order dated 10.10.2002 passed by the learned trial court is set aside and the application under Order 7 Rule 11 CPC of the defendants is allowed and the Civil Suit No.34/2002 filed by the plaintiffs is dismissed. No order as to costs.

(Dr.VINEET KOTHARI),J.

vs/